

A U.P. STATE ELECTRICITY BOARD THROUGH ITS
CHAIRMAN AND ORS.

v.

SRI RADHEY MOHAN VERMA

B MARCH 31, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C *Indian Electricity (Uttar Pradesh Second Amendment) Ordinance, 1975—Ss. 6 A(2), 6A(3)(i)—Suspended employee of erstwhile company claiming after takeover to be deemed employee of Board—Held, takeover under memorandum of understanding having taken place even before Ordinance came into force, S.6 A(2) was not applicable—Respondent not a deemed employee of Board.*

D The Respondent was a suspended employee of the Mirzapur Electricity Supply Company. Under a memorandum of understanding the company's licence was revoked on September 1, 1975 and the Appellant Board took over the company. One of the terms of takeover was that the Board will not take any employee against whom disciplinary proceedings were pending.

E Under S.6A(2) of the Indian Electricity (Uttar Pradesh Second Amendment) Ordinance, 1975, which came into force on November 27, 1975, the licence of every undertaking shall stand revoked from that date unless revoked earlier. Thereupon under S. 6A(3)(i) every employee of the
F licensee shall become an employee of the Board. The Respondent's writ petition claiming reinstatement on the basis of the above provisions was allowed by the High Court. The Board appealed to this Court.

Allowing the Appeal, this Court

G HELD : The Respondent was not a deemed employee by operation of law. The Ordinance had come into force on November 27, 1975. Much prior to the Ordinance coming into force, the licence of the company stood revoked on September 1, 1975. The consequence was that S. 6A(2) became
H inapplicable and it not being a statutory revocation, operation of sub-section (3) was not extended. [297-D-F]

CIVIL APPELLATE JURISDICTION : Civil appeal No. 4317 of 1994. A

From the Judgment and Order dated 9.9.91 of the Allahabad High Court in C.M.W.P. No. 12217 of 1983.

B. Sen and Pradeep Misra for the Appellants. B

Bharat Sangal for the Respondent.

The following Order of the Court was delivered :

Leave granted. C

The appeal is directed against the order of the High Court of Allahabad in C.M.W.P. No. 12217/83. The respondent was admittedly a suspended employee of Mirzapur Electricity Supply Co. (for short 'Company') against whom disciplinary proceedings were pending. On September 1, 1975, under s.4(i) of the Indian Electricity Act, 1910, for short 'the Act', the licence of the Company was revoked under a memorandum of understanding and an agreement reached with the appellant. One of the terms thereof was that the appellant will not take any employee against whom disciplinary proceedings were pending. The appellant took over the Company. Eight years thereafter, the respondent filed the writ petition placing reliance on Section 6-A of the Act as amended by an U.P. Act and contended that the respondent was entitled to be taken into service, but was unlawfully prevented from discharging his duties. The High Court accepted the contention and issued the mandamus as prayed for with consequential reliefs. D E

The only question that arises in this case is whether the respondent is entitled to the relief under section 6-A(3) of the Act. Sub-section 2 of s. 6-A reads thus : F

"6-A(2) Notwithstanding anything contained in sections 4, 4-A, 5 and 6, the licence of every undertaking, unless revoked before the commencement of the Indian Electricity (Uttar Pradesh Second Amendment) Ordinance, 1975, shall stand revoked with effect from the appointed day." G

Sub-section (3) of s. 6-A says that on revocation of the licence under H

A sub-section (2) the following provisions shall have effect, namely :

(a) every undertaking the licence in respect of which stand revoked shall by virtue of this section stand and be deemed to have stood transferred to and vest and be deemed to have vested in the State Electricity Board, hereinafter in this section called 'the Board', free from any debt., mortgage of similar obligation of any licence attaching to the undertaking;

Provided that any such debt, mortgage or similar obligation shall attach to the amount payable for the undertaking as mentioned in Cl.(h).

(b) the rights, powers, authorities, duties and obligations of the licensee under his licence shall stand transferred to the Board and the licence shall cease to have further operation;

(c) the licensee shall deliver forthwith the undertaking to the Board or to such officer as the Board may appoint in that behalf, and if any property or asset, book of account, register or other document forming part of the undertaking be in the possession, custody or control of any person other than a licensee, such person shall also deliver the same to the Board or to such officer as aforesaid;

(f) the owner of every undertaking shall, within sixty days from the appointed day or within such further time as the Board may allow in that behalf, furnish to the Board or to such officer as the Board may specify, complete particulars of all liabilities and obligations incurred on the security of the undertaking and subsisting on the appointed day, and also of all agreements and other instruments, pertaining to the undertaking (including agreements, decrees, awards, standing orders and other instruments relating to leave, pension, gratuity, provident fund and other terms of service of any person employed in the undertaking) in force immediately before the appointed day and the Board shall afford him all reasonable facilities for the same;

(g) the following provisions shall govern the working in the undertaking immediately before the appointed day;

(h) every person who has been immediately before the appointed

day in the employment of the licensee shall become on and from the appointed day an employee of the Board on the same terms and conditions and with the same rights as to pensions, gratuity and other matters as would have been admissible to him if the undertaking had not been transferred to and vested in the Board and continue to do so unless and until his employment under the Board is terminated or until his remuneration or other terms and conditions of employment are duly altered by the Board."

A combined reading of these provisions clearly indicates that notwithstanding anything contained in sections 4, 4-A, 5 and 6 the licence of every undertaking, unless revoked before the commencement of the Indian Electricity (Uttar Pradesh Second Amendment) Ordinance, 1975 shall stand revoked with effect from the appointed day. On revocation of the licence under s. 2, the consequences enumerated in clauses (a) to (g) of S.6-A(3) would flow. The owner of every undertaking shall furnish to the Board or to its authorised officer complete particulars of the liabilities and pre-existing obligations. As seen, Cl.(g) postulates that every person who has been immediately before the appointed day, in the appointment of the licensee (Mirzapur Electricity Supply Co.) shall become on and from the appointed date employee of the Board on the same terms and conditions..... It is seen that admittedly the licence of the Company was revoked on September 1, 1975. The Ordinance had come into force on November 27, 1975. Much prior to the Ordinance had come into force, licence of the Company stood revoked on September 1, 1975. The consequence is that s. 6-A(2) became inapplicable. Once sub-s.2 becomes inapplicable and it not being a statutory revocation, operation of sub-s. (3) is not extended, consequently, the respondent was not a deemed employee by operation of law. Unfortunately, the High Court had not considered this statutory operation. Therefore, the High Court has committed manifest error of law in allowing the writ petition and issuing mandamus and the consequential benefits sought for by the Respondent. It is open to the respondent to pursue the remedy other than the relief sought for under s.6-A(3). The appeal is allowed. The writ petition is stands dismissed. No costs.

S.M.

Appeal allowed.